

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TYLON C. CHRISTIAN,

Plaintiff,

v.

DOUGLAS TIMMERMAN and
KATHERINE DAYTON,

Defendants.

ORDER

03-C-688-C

On December 5, 2003, plaintiff filed this civil action contending that defendant Douglas Timmerman and Katherine Dayton violated his due process rights by detaining him and revoking his parole without due process of law. From that time to the present, the case has survived initial dismissal, appeal, remand and a motion for partial summary judgment. Nonetheless, as the court has begun to prepare for trial, it has become increasingly clear that several fundamental questions remain unanswered in this case. Unless the court and the parties can clarify what is in dispute, it is unlikely that trial will result in meaningful adjudication of the allegations raised in plaintiff's complaint. Therefore, it appears that the most appropriate course of action is to suspend the trial date and appoint counsel to

represent plaintiff in this lawsuit.

In his complaint, plaintiff alleged that defendants subjected him to parole holds on numerous occasions between February 15, 2000 and August 20, 2002. He alleged that the holds were related to his convictions in Iowa County Case No. 98CF003, in which he was convicted of one count of battery and two counts of criminal damage to property and Iowa County Case No. 98CM172, in which he was convicted of one count of issuing a worthless check. According to plaintiff, even after his parole expired in those cases, defendants continued to place him on “parole holds,” using Case Nos. 98CF003 and 98CM172 as justification for his confinement. In addition, plaintiff contended that defendants revoked his (allegedly expired) parole without a hearing. In an order dated January 31, 2005, I stated:

According to the court of appeals, petitioner’s complaint does not reveal whether the custody about which petitioner complains was authorized by the parole terms that he conceded violating at a parole revocation hearing in June 2002, or whether the parole revocation relates to an entirely different prosecution and conviction. This is a matter that cannot be resolved without further development of the record on a motion for summary judgment.

Order dated Jan. 31, 2005, dkt. #16, at 2. Although counsel for defendants filed a motion for partial summary judgment on August 2, 2005, the motion was unopposed and related solely to the lack of personal involvement of former defendants Denise Symdon, Marcia Goodwin, Carol Briones and Neil Lane. It did not “develop the record” with respect to

plaintiff's claims and did nothing to further the court of appeals' directive to "sort out" in "adversarial proceeding[s]" whether defendants had the authority to detain plaintiff on parole holds and revoke his parole for Case Nos. 98CF003 and 98CM172 from February 15, 2000 through April 18, 2002. It may be that the parties do not dispute the facts of the case, but rather dispute or misunderstand the operation of law as it applies to those facts. If the only questions in this case are legal ones, rather than disputed issues of material fact, it makes little sense for the case to proceed to a jury. If the questions do involve factual disputes, clarifying what each side alleges will help both the parties and the jury.

Along with his complaint in this case, plaintiff submitted a number of documents including revocation summaries, parole agent chronology logs, numerous hearing notification forms, notices of violation and forms recommending various "administrative actions." These documents relate to four criminal cases: Iowa County Case Nos. 98CF003 and 98CM172 and Dane County Case Nos. 01CM1182 and 01CM4380. Although these documents provide a partial chronology of plaintiff's community supervision history, they do not provide a complete timeline. Several key pieces of information are missing, including the conditions imposed by the court and by defendant Dayton for each of plaintiff's convictions, a copy of form DOC-186B "Order Reinstating Parole" (assuming such a document was ever issued), and the dates of each of plaintiff's parole holds (and the convictions to which each hold applied). A review of the documents raises even more basic questions: Was plaintiff's

parole *ever* revoked on Case Nos. 98CF003 and 98CM172, or was plaintiff discharged from supervision in those cases? If parole was revoked on those cases, when was it revoked? These are questions that must be resolved if this case is to progress.

It has become apparent that resolution of these issues requires a knowledge of sentence computation and of the laws governing parole supervision beyond that possessed by plaintiff. I have become convinced that plaintiff will not be able to represent himself at trial without the assistance of a lawyer and I cannot say that the outcome of the case would be the same whether or not counsel were appointed. Therefore, the court will make efforts to locate a lawyer willing to represent plaintiff in this case, with no guarantee of compensation for his or her work.

Plaintiff should be aware that in any case in which a party is represented by a lawyer, the court communicates only with counsel. This means that if plaintiff agrees to representation, the court will no longer communicate with plaintiff directly about matters pertaining to this case. It will be expected that plaintiff will communicate directly with his lawyer about any concerns and allow the lawyer to exercise his or her professional judgment to determine which matters are appropriate to bring to the court's attention and what motions and other documents are appropriate to file.

ORDER

IT IS ORDERED that

1. The trial in this case, currently scheduled for February 13, 2006, is SUSPENDED;
2. The writ of habeas corpus ad testificandum issued for plaintiff to appear at trial on February 13, 2006, is cancelled;
3. All proceedings in this case are STAYED pending appointment of counsel for plaintiff. As soon as I locate counsel willing to represent plaintiff, I will advise the parties of that fact. Soon thereafter, a status conference will be scheduled to establish a new calendar for this case.

Entered this 13th day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge